"COÖPERATION" AND THE ANTI-TRUST LAWS

By Gilbert H. Montague,
Counsellor at Law, New York.

The last presidential campaign, among its other blessings, enriched the popular vocabulary of economic and political discussion with the word "coöperation." One step away from combination, and more altruistic in sound than competition, coöperation served well as a political rallying cry throughout the campaign, and has since done yeoman's service in rallying business men to collective action regarding prices, territory and other thorny trade conditions unpleasantly associated with the Sherman anti-trust law. Around coöperation a literature has developed, upon it has sprung up a cult, and before it, in the hopes of its devotees, lies a future of usefulness, in which coöperating trade associations shall walk arm and arm with the newly established Federal Trade Commission and find lasting peace and rest from the Sherman law.

"The radical change that is taking place in the commercial and industrial world—the change *from a competitive to a coöperative basis*," is the program of this coöperative movement. "Coöperation is essentially constructive; competition destructive," is its creed. Hostility to the Sherman law is its controlling habit: "The very theory of our anti-trust laws," asserts the coöperationist, with a wealth of italics,

> is that they *suppress coöperation*, and, by encouraging competition, promote the widest fluctuations in prices. . . . . The Sherman law is *destructive* in *purpose* and *application*. State anti-trust acts are framed to *tear down* and *destroy*. . . . . The much vaunted Sherman law will pass into economic history, along with such English laws as those against "regrating," "forestalling," and "engrossing," and laws against labor unions—as one of man's futile attempts to check evolution. . . . . The country has reached the parting of the ways. It must make its choice and make it intelligently—either the competitive or the coöperative basis.[1]

[1] These and other quotations and references to "coöperation" that follow are from Arthur J. Eddy: *The New Competition*, A. C. McClurg & Co., Chicago, 1915. "Coöperation," in the sense intended by Mr. Eddy and others of his school, is the "coöperation" with which this article deals.

Prices are the first concern of the coöperationist. "Coöperation, whether voluntary or involuntary—compelled by law—is the only regulator of prices. Competition, free and unfettered, is absolutely destructive to all stability of prices." For this the coöperationist's remedy is easy: "Associations of competing manufacturers and dealers to lessen competition and advance prices!"

This, however, is clumsily anticipating the secret.

The careful coöperationist, in expounding the new dispensation, generally picks his words with greater caution, for "in the present uncertain state of the law, the attitude of Congress would seem to be that of forbidding the voluntary association that is absolutely necessary to eliminate those 'brutal' features of competition."

Frank interchange of information, therefore, is the orthodox description of the business of such an association. Specifically, the members of the coöperating association are supposed to disclose and discuss freely: "(1) Every element that enters into the cost of their work. (2) Work in hand, the terms and conditions upon which it is being done. (3) Work in prospect; all requests for bids, with frank interchange of information regarding such proposed work, and the conditions under which it must be done. (4) All bids actually made on work. (5) Conditions affecting their general welfare."

"So long," adds the cautious coöperationist, "as its members enter into no agreement to fix prices or control competition, the legality of such an association could hardly be questioned."

Probably not; but how far removed from "fixing" prices and "controlling" competition is the result of such a coöperating association?

"The effect of competition under such open and straightforward conditions," continues the coöperationist, "would be stability of prices at normal levels. . . . . Prices would vary, but they would not vary widely." This significant achievement of the coöperating association is emphasized again and again:

> Prices and profits will take care of themselves: they will be normal and reasonably constant. . . . . Prices are not "fixed," in the active sense of the verb, but they become stable as the result of normal conditions. . . . . The more open the price the stronger the tendency toward stability.

Not that open prices alone can accomplish this stability: "The open price policy means not only open prices but open dis-

cussions regarding the circumstances attending the cuts." Here, at last, we find the milk in the cocoanut.

How shall "open discussions regarding the circumstances of the cuts" be had without influencing prices in violation of the hated Sherman law? The difficulties of the coöperationist are obvious. A never ceasing embarrassment is the poverty of the English language. Euphemisms for "lessening competition" and "advancing prices" are all too rare. "Stability" of prices, "friendly" competition, "careful" bidding, "normal" price levels, "reasonably constant" prices, "intelligent competition," "regulation," and "elimination of brutal competition," are all more pleasing than their infelicitous synonyms "lessening competition" and "advancing prices." Plain business men, however, are unfortunately prone to stumble at such verbal concealments of thought. "It requires time," laments the sore-tried coöperationist,

to eradicate traces of habits which have become second nature, habits of thought, of speech, of conduct. Even when men are honestly trying to think along the new lines they will talk and correspond along the old, the old phrases will crop out and their letters will bristle with language that heretofore has been used only in "fixing" prices and suppressing competition.

Alas! it is all too true!

So it happens that the "open price association," the only approved instrument of the orthodox coöperationist, is always a delicate matter:

"At the outset," he explains,

they must be made to understand that the meeting is not called for the purpose of entering into any agreement along old lines; it is not called for the purpose of fixing prices, allotting business, controlling competition, restraining trade, or creating a monopoly; there is no intention of doing any of these things either directly or indirectly.

But here the skeleton intrudes at the feast.

In order to avoid misunderstandings by members, by customers, by the public, it is important that the constitution and by-laws be carefully drawn so as to express in full the purposes of the association and every agreement underlying its organization. This is advisable everywhere. *It is doubly advisable in this country where the law regarding restraint of trade is so strict and the public so suspicious.* . . . . The fundamental propositions must be so framed that *even a judge not versed in business* will be able to understand the plan.

And lest the thrifty business man fail to see the necessity of always employing an orthodox coöperation lawyer, the coöperation-

ist gloomily cites unsuccessful "attempts" at coöperation, made "without counsel," and so "foredoomed to failure!"

After the "open price association" is organized come the meetings. They should be held, it appears, every month or so. Primarily they are devoted to discussions of complaints and questions by each of the members "regarding work taken during the preceding month by the member under fire." To put a member "under fire," however, without somehow influencing his conduct in violation of the Sherman law, is not a job for unaided business men. This means, of course, more work for the coöperation lawyer. At every meeting, his services are needed to steer the discussion safely within the euphemistic vocabulary of coöperation, and to check any unfortunate lapses of the lay-members into the language of plain speech. And here the cautions of the coöperationist become extraordinary: "Do nothing," he commands,

> you are afraid to record; record everything you do, and keep your records *where any public official in the performance of his duties may have easy access to them.* In short, preserve so carefully all evidence regarding intentions, acts, and results that there will be no room for inference or argument that anything else was intended, done, or achieved.

Certainly there is need for caution. Collective action to influence prices has repeatedly been attempted during the past twenty-five years, and often under what appeared the most excusable circumstances. Wrecks of associations and combinations, however, of every kind and description, that have run foul of the Sherman law merely because they have tried to stabilize prices, may be found in almost every state of the Union. Associations and combinations of coal operators, coal dealers, railroads, pipe manufacturers, meat packers, salt manufacturers, wholesale grocers, paper manufacturers, elevator manufacturers, lumber dealers, retail druggists, furniture manufacturers, umbrella manufacturers, powder manufacturers, stationery manufacturers, plumbing supply manufacturers, tow-boat operators, butter and egg dealers, electric lamp manufacturers, wire manufacturers, horseshoe manufacturers, cable manufacturers, kindling-wood manufacturers, flour manufacturers, coaster brake manufacturers, steamship operators, wharf operators, fruit dealers, shoe-last manufacturers and breakfast food manufacturers have all been successfully prosecuted under the Sherman law. In more than a score of instances, criminal proceedings resulting in

the imposition of over a half million dollars in fines have been concluded. Nor is this the end. The Department of Justice now has pending suits against various associations and combinations of meat packers, turpentine manufacturers, coal operators, paper manufacturers, railroads, steamship operators, bill posters, film manufacturers, horseshoe manufacturers, and butter and egg dealers. Before this display of judicial and governmental disfavor—which is still unabated and quite unaffected by the recent turn in judicial, governmental and popular feeling that has touched other phases of the trust problem—the coöperationist has good reason to be cautious.

How does he expect to escape the fate of his predecessors? He explains his theory himself: "It is one thing," he says,

> for men in a meeting to say, one after another, "My price is so and so," with the result that after the meeting all their prices prove substantially the same as the figures mentioned. It is quite a different thing for the same men to come to a meeting and each report, "My actual sales for the past month have been so and so, and here are the details of each transaction." In that statement there is no direct or implied agreement to maintain prices, no obligation of any kind to refrain from cutting. . . . . When men meet and each says, "My price is so and so," and all say the same, a promise to maintain that price may, perhaps, be inferred from subsequent events; *but no such promise can be inferred from frank statements of past transactions;* and yet *more in the way of stability of prices . . . . will result from the mere interchange of information than from an agreement to maintain prices. . . . . Knowledge regarding bids and prices actually made is all that is necessary to keep prices at reasonably stable and normal levels. No agreements to maintain prices are necessary.*

Everything in coöperation is so simple! "Stability of prices" and "prices at reasonably stable and normal levels"—the aim of every association and combination ever prosecuted and broken up by the Department of Justice, the result sought by every well-meaning business man whom the courts have ever convicted and fined under the Sherman law—might all have been so easily and safely accomplished simply by saying "My price *has been* so and so" instead of "My price *is* so and so!"

But is it really so simple and easy? The Supreme Court has repeatedly held the Sherman law to "embrace every conceivable act which could possibly come within the spirit and purpose of the law, without regard to the garb in which such acts are clothed," with absolutely "no possibility of frustrating that policy by re-

sorting to any disguise or subterfuge of form," nor yet "to escape by any indirection the prohibitions of the statute."

If now coöperation is a garb that protects as well as clothes, if indeed the "open price association" is a form that frustrates the policy of the Sherman law, and if the magical phrase "My price *has been* so and so" is a spell that really keeps away the devils of the Department of Justice, then the coöperationist truly has found a talisman more desired than ever was the philosopher's stone, and an enchantment more powerful than any alchemy.

The law, however, is not quite "a ass," notwithstanding Mr. Bumble and the coöperationists; and to coöperationists who profess that "no man whose aim in life is to bear himself creditably among his fellows cares to split hairs with the law, to take any chances on a court's decision as to whether his acts are 'reasonable' or 'unreasonable,'" the disagreeable habit the courts have of judging acts by their effect, instead of by their form, may yet prove disconcerting.

Take the Gary Dinners discussed by the federal district court in the recently decided government suit against the United States Steel Corporation: "Where at a meeting of many persons," said Judge Buffington,

> such action is taken whose legality is afterwards called in question, the decision may be vitally affected by ascertaining the fact whether the action was really taken by each individual acting for himself, or whether those present were, in fact, pursuing a common object. . . . . Suppose what happens is this: A number of persons take no action about territory or output, their discussions being mainly concerned with the subject of price, and suppose, further, that they refrain from making a definite formal agreement, and limit themselves to an understanding, a declaration of purpose—an announcement of intention—what, then, is to be said? Have they offended against the law? This question cannot be answered until we know what the participants were really doing. *It is not enough to rest upon the varying names that may be given to the transaction.*

And then the Judge quoted various witnesses, to the effect that all that anybody said at the Gary Dinners was substantially "My price *is* so and so," or "My price *will be* so and so," and the Judge concluded:

> Now to our minds the testimony taken as a whole makes the conclusion inevitable that the result of these meetings was an understanding about prices that was equivalent to an agreement. We have no doubt that among those present some silently dissented and went away intending to do what they pleased; but

many, probably most, of the participants, understood and assented to the view that *they were under some kind of an obligation to adhere to the prices that had been announced or declared as the general sense of the meeting.* Certainly there was no positive and expressed obligation; no formal words of contract were used; but most of those who took part in these meetings went away knowing that prices had been named and feeling bound to maintain them until they saw good reason to do otherwise, and feeling bound to maintain them even then until they had signified to their associates their intention to make a change. *We cannot doubt that such an arrangement or understanding or moral obligation—whatever name may be the most appropriate—amounts to a combination or common action forbidden by law.* The final test, we think, is the object and the effect of the arrangement, and *both the object and effect were to maintain prices, at least to a considerable degree.*

All the judges in the Steel case concurred in this conclusion of Judge Buffington; and two of them took pains to show that in their opinion the mere stability of prices during the continuance of the Gary Dinners, in contrast with the wide variations in prices during the time when there were none, pretty conclusively established the illegality of Gary Dinners.

Judged by this test, how would an "open price association" fare that had achieved "stability of prices," "reasonably stable and normal levels," "fixed prices for fixed periods" and all the other advertised objects of coöperation?

Take another test; look at the "open discussions" so valued in the "open price association": These discussions, the coöperationist explains, relate to "the circumstances attending the cuts" and complaints and questions by each of the members "regarding work taken during the preceding month by the member under fire." "The right to publish prices, exchange bids freely and openly, to deal frankly with customers and competitors," exclaims the coöperationist,

> are rights that cannot be curtailed by any legislative body in this country. . . . . The right of a body of men to say what they will do may not be clear under the many anti-trust laws, but we have yet to hear of a law that tries to prevent men telling what they have done.

These rights, however, as the Steel decision shows, are all subject to serious qualifications. Does the coöperationist keep safely within them?

When the coöperationist is organizing the "open price association" he rests it on this fundamental principle:

> No bidder is bound to adhere to his bid for the fraction of a second. After ascertaining the bids of others each is free to lower his own bid to secure the work. . . . . The safe course is to provide for cutting, remove all restric-

tions, so that under the rules of the association no member can so much as question the right of another to bid as freely, as often, and as low as he pleases.

Recalling the other "fundamental proposition" that "knowledge regarding bids and prices actually made is all that is necessary to keep prices at reasonably stable and normal levels," it is a little surprising later to learn that questions and complaints can arise, and members can go "under fire," even while both propositions are fully satisfied. "Fundamental propositions," however, are subject to quick changes in the coöperative era. Having formed his "open price association," the coöperationist promptly dispenses with his "fundamental proposition," and adjures the new member that

having made his bid, if he finds he is not the lowest, he must *not* rush in with a new bid to get the work away from a man fairly entitled to it. . . . . The practice is wrong and contrary to the spirit of the new competition. . . . . *The man who tries to change his bid will be looked upon as on a par with the second-hand clothes dealer!*

This surely is going "under fire" with a vengeance! Many an association and combination has, with less moral compulsion than this, found itself in the unwelcome embraces of the Sherman law.

Consider also the "open discussions" of the "open price association" regarding the actual conditions in the particular industry. They sound innocent: "This inquiry," explains the coöperationist,

should take up each plant or company represented with a view to ascertaining and noting briefly in the minutes the establishment of the plant in its particular locality and why; its capacity labor employed and its development generally . . . . It is only by a careful comparison of data that it can be ascertained whether a given plant has any territory or customers that naturally depend upon it. . . . . This investigation,

explains the coöperationist with an eye to the Sherman law, "has nothing to do with any scheme for allotting or apportioning business; it simply seeks to get at the facts."

But does it? "A plant is located, say, in Minneapolis," continues the coöperationist;

it is obliged to buy all its raw material in Pennsylvania; it is in competition with Pennsylvania companies that ship the finished product to the Northwest; on its face the situation seems to look desperate for the Minneapolis company. . . . . If the Pennsylvania companies are bidding recklessly for *business they are not fairly entitled to* they may depress prices for a time. . . . . The right committee could make a report that would set forth in detail the advantages and disadvantages of every member of the association, and in so far as it can legally do so it should be the effort of the association to help each member to

hold the *trade legitimately belonging to it*, as against unfair and destructive competition.

Fairly and *legitimately* are here question-begging terms. The controlling words, unfortunately, from the legal standpoint, are *business they are not entitled to* and *trade belonging to it.* Many an association and combination, though less active than this in suggesting an allotment of territory, has been broken on the wheel of the Sherman law.

The trouble with the coöperationist is that he has never been quite honest with his problem.

Too many improvements which he has claimed could only be obtained through coöperation have been and are being accomplished by trade organizations of unquestioned legality through collective action free from all suspicion of control. Too many developments which he disapproves and proposes to cure by coöperation have been and are being recognized and approved as entirely wholesome economic tendencies. And too many evils which he has claimed could only be cured by coöperation have been and are being remedied by the much despised anti-trust laws.

Collective action, when not directed toward influencing prices, limiting output, allotting territory, or in any other way substantially lessening competition, has always been endorsed upon the very highest authority. The work of numerous trade associations in standardizing of materials, negotiating for more equitable freight rates, recovering refunds for excessive freight charges, providing mutual fire insurance, simplifying terms and instruments of credit, and limiting credit risks has often been heartily commended by the government. Even cost accounting, to a certain extent, is highly legitimate work for a trade association. "Apart from this aspect of price regulation," declared the chairman of the Federal Trade Commission while he was Commissioner of Corporations,

> it may be a proper function of trade associations to assist members to adopt a proper system of cost accounting that shall accurately measure amounts actually expended for or chargeable to production. The adoption of standard specifications, recommended by associations, is often of advantage to both manufacturers and purchasers and tends to promote economies in industry and commerce.[2]

[2] These and some other quotations that follow are from *Farm-Machinery Trade Associations*, Department of Commerce, Bureau of Corporations, March 15, 1915. Their significance is enhanced by the fact that the then Commissioner of Corporations is now chairman of the Federal Trade Commission.

"In these days," said Judge Buffington in the Steel case,

> every large business has its societies and associations, and these meet periodically to exchange information of all kinds, to compare experiences, to take note of improvements in machinery or process, to discuss problems, and generally to profit by the interchange of ideas and the study of observed facts.

While so many activities of unquestioned legality are available to trade organizations, persistent activity in directions measurably affecting prices can hardly fail to invite interference from the anti-trust laws.

Much that the coöperationist has attempted has not really required collective action.

Cost accounting, for example, is essential in modern business; and standard systems of cost accounting, adapted to the needs of particular industries are always legitimate whether proposed by trade associations or promulgated by individuals. When goods are sold in competition of one another, however, individual costs computed according to any system of cost accounting are essentially a purely individual matter. Cost accounting was devised to prod individual businesses to greater economic efficiency so that they might more successfully compete with their rivals. Full and adequate scope to cost accounting, therefore, is given when it is confined to this function alone. When competitors exchange figures regarding each other's costs for the purpose or with the hope that competition may be tempered to the highest individual costs, this function is entirely frustrated.

How clearly this is understood in government circles was shown by the chairman of the Federal Trade Commission while he was Commissioner of Corporations: "If the laws of the United States," he declared,

> forbid direct regulation of prices by competitors among themselves as agreements in restraint of trade, it should be determined whether they do not also forbid the *regulation of prices by indirection, through concerted action of competitors in adopting a uniform system of cost accounting, in exchanging information in regard to their costs, and through recommendations to fix prices in accordance with the cost.* The adoption of common standards of cost and the exchange of information in regard thereto is mainly to secure a similar course of action on the part of each member. . . . . The principle, however, of such a determination of prices through costs is not in harmony with the principle of competitive prices. It is evident, moreover, that *the plan of meeting to discuss and compare costs computed on this basis involves the possibility of agreements in respect to adoption of prices based upon the highest costs reported, or of agreements to add a high, uniform, arbitrary rate of*

profit, or even direct agreements on prices. The question to be emphasized here is whether competing manufacturers should be permitted to establish and maintain even approximately uniform prices by concerted action in comparing costs; and whether such proceedings are free from the dangers and objections incident to more direct methods of fixing uniform prices among competitors. . . . . While the cost-educational movement has various aspects, the important fact to be considered is that *the method of fixing prices through coöperative study of costs is not merely susceptible of abuse in particular cases, but directly militates against independent action on the part of competitors.*

"One of the fundamental propositions of the new competition," asserts the coöperationist, "is that, in so far as human sagacity can prevent, no man *shall be permitted* to sell labor or material below cost." But the coöperationist is wrong. What the new competition proposes is that, in so far as human sagacity can prevent, no man *shall lack individual and lawful means of knowing* whether or not he is selling labor or material below cost. Between these two propositions lies all the difference between coöperation and the really new competition.

How utterly the coöperationist has missed the trend of the really new competition appears from his proposal for "segregation": "Under segregation," he explains,

the trust or large corporation remains intact, but in the operation of its different companies or branches and in producing and selling its different lines of products it is required to keep its accounts and make its reports in such a manner that each will stand by itself and be subject to easy investigation and ready comparison.

By segregation the coöperationist proposes to compel them to make more money, by making each department take a profit as the material passes through department after department to the finished product. "The supposed right to sell anything below cost" —that is, except at a fair profit—explains the coöperationist, "cannot be made to turn upon whether the particular article is or is not related to some other article made or handled by the same man or company."

Necessarily, segregation is corollary to the whole proposition of coöperation. Corollary and proposition must stand or fall together. And the corollary has already fallen.

The notion that integrated industry should serve the community only upon terms that will support unintegrated industry, and that, so long as any vestige of the old uneconomical order persists, the community shall be denied the savings of the new economical

order, has never commended itself to human nature, and is contradicted by the whole trend of legal and popular thought. This notion is identical with an unhappy conception of the Sherman law that once obsessed the Department of Justice, whence the coöperationist appears to have borrowed it to wear, perchance, as a badge of safety. Any vitality it ever may have had was sapped by the "rule of reason" announced by the Supreme Court in the Standard Oil and American Tobacco cases, and received its *coup de grace* when the Supreme Court sustained the combination presented in the United Shoe Machinery Company and held that

> the disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is just as lawful to make every part of a steam engine and to put the machine together, as it would be for one to make the boilers, and another to make the wheels.

Somewhat less epigrammatic, perhaps, but far more impressive in its mass, is the utter rejection of this notion of segregation implied in the recent decision of the federal district court upholding the collossal integration of the United States Steel Corporation.

Since 1912, indeed, the whole trend of judicial interpretation of the Sherman law and of legislative additions to the anti-trust laws has cut under the foundation of coöperation. Evils for which coöperation claimed to be the sole remedy have been reached and cured by the despised Sherman law or by the supplementary legislation adopted in 1914. All the difficulties, for example, that the coöperationist conjured up around the enforcement of the rule not to undersell a rival where the purpose is to drive him out of business, have many times been surmounted by the courts in the enforcement of the Sherman law. The suggestion that coöperating associations are "absolutely necessary to eliminate those 'brutal' features of competition" has repeatedly been refuted by decisions under the Sherman law. So, also, with "secret rebates, terms, commissions, ... selling to one man on better terms than are charged his competitor . . . . selling in one locality at different prices than those charged in another—all other things being equal:" The coöperationist's way of punishing and preventing them is through the "open price association." "These are practical propositions of wide-reaching importance," said the coöperationist, "and can be worked out only by the men actually concerned." But events have not fallen out as the coöperationist proposed. The Clayton law of

1914, forbidding with certain reasonable exceptions every discrimination in price "where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly," has exactly reached the evil for which coöperation professed to be the only remedy.[3]

The greatest miscarriage in the coöperationist's program, however, has been the Federal Trade Commission. "Without associations," declares the coöperationist,

> it would be impossible for a federal commission to enforce the proposed provisions which are general in character. Only the parties engaged in a trade or industry are in a position to work out the details, and formulate the rules necessary to compel obedience.

The function of the Federal Trade Commission in the coöperationist's program, therefore, was simply to enforce the rules of the coöperating associations. The coöperating associations were to

[3] The coöperationist's distorted notion of the Sherman law and the Clayton law in their relation to unfair competition appears in his effort to prove that the "broad provisions of the new law are in line with the spirit and argument" of his own proposals. Inveighing against "the 'cut throat' spirit of the Sherman law" he exclaims: "The spirit of the Sherman law is unrestricted competition, and that means unrestricted discrimination, the bitterer and more vicious the better; the spirit of the Clayton Act is, treat all men fairly, do nothing to injure your competitor. Under the Sherman law it is almost a presumption of guilt if your prices are the same as your competitors; under the Clayton Act it is almost a presumption of guilt if they are not the same. Under the Sherman law you run the risk of being found guilty if, before making your own prices in a given town, you ask the local dealer what his prices are, and charge the same. Under the Clayton Act you run the risk of being found guilty if you go into a town and make prices without first learning what the local dealer asks, for the Clayton Act simply permits you to meet competition. In short, the Clayton Act makes it essential for a man to act very cautiously lest he injure a competitor by wittingly or unwittingly discriminating in prices. As for deliberately taking an order below cost to get business away from a competitor, that is quite without the pale of the Act." In view of the Sherman law decisions in the Standard Oil, the American Tobacco, the Powder, the Turpentine, the Watch Case, the Cash Register, and the Steamship cases—not to mention many less familiar decisions and many cases that have been settled by consent decrees—it would seem hardly necessary to state that the Sherman law effectively punished "cut throat competition" long before coöperation or the Clayton law were ever thought of; and that any business man who adopts the coöperationist's interpretation of the Clayton law as an endorsement of coöperation is liable to incur very disagreeable penalties. Far from repealing the Sherman law as affecting business competition, the Clayton law practically paraphrases and confirms it.

become the center of government so far as the regulation of business was concerned, and "all restrictions upon the organization of *associations and combinations to control occupations, trades and industries*" were to be completely removed. But the Federal Trade Commission, as created in 1914, was a striking contradiction of this program. Instead of being made to dance attendance upon coöperation, or required to "review the acts of the association . . . . revise and fix prices and conditions of purchase and sales, award damages, enforce penalties," or charged with the duty "*to see that prices are maintained precisely as agreed . . . . and keep them fair and stable,*" the Commission has been planted four-square upon the Sherman law, and precluded by its essential powers and duties from playing any such rôle as the coöperationist had assigned to it. Empowered to prevent "unfair methods of competition in commerce," price discriminations, and various other practices tending to substantially lessen competition, the Federal Trade Commission, without the assistance or need of any of the paraphernalia of coöperation, now secures to every individual association, corporation, partnership, firm, and every man, woman and child in the whole United States every legitimate benefit that coöperation ever professed to secure to its own exclusive membership.

Individualism rather than collectivism is the genius of American institutions. That is why the Sherman law, with its staunch affirmance of the individualistic principle and its suspicion and hostility towards trusts, combinations, pools, associations and every other manifestation of the collectivistic principle, has become the eleventh commandment of American economic and political life. That is why coöperation, with all its blandishments and enchantments, has never lured and never can lure the courts or any considerable proportion of the people from their faith in the contrary principle.

Extraordinary growth and big size are the common ambitions of mankind, and are not criminal. Accretion and integration, as the Steel case and Shoe Machinery case have shown, are strictly true to individualism, and therefore, within the limits determined by efficiency, are held to be legitimate. Many concerns, now members of more or less furtive "open price association", could probably come together, not all in the same group, perhaps, but in several groups, each of substantial size, in closer and more practical and more per-

manent combination then they have yet dreamed of, and yet with entire safety from the anti-trust laws. To such concerns, the elaborate ritual of the "open price association" now brings only expense without any added legal safety, and attempts in a clumsy, tentative and indirect fashion, to do what can really be accomplished in a handier, more definite and more direct fashion, with less expense and really greater legal safety. Were they to drop subterfuge, and combine into units each economically and competitively effective, and neither too few nor too large to prevent substantial competition between such units, it is submitted that everything desirable in coöperation would be accomplished without offending against the letter or the spirit of the anti-trust laws. Accretion and integration, into strong effective, economic units of concerns now too weak to compete effectively, will it is believed, prove more adequate than the association idea in the solution of problems that coöperation has vainly tried to solve.

Accretion and intergration, making for efficiency rather than suppression of competition, derive not from coöperation bnt from individualism. They are wholly individualistic developments. They fulfill the highest purpose of the anti-trust laws. Coöperation asks the individual to transfer his reliance from himself and from his government, and to place it in an association of his competitors. But the Sherman law, the Federal Trade Commission, and the Clayton law, all assert the individual's reliance in himself and in his government. With no sacrifice of the individualistic principle, they secure to him everything legitimate that coöperation promises, and help him work out his economic salvation and independence in traditional American fashion.